

STATE OF NORTH CAROLINA
CHATHAM/ORANGE COUNTIES

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER: 20 R

JURY TRIAL RESUMPTION PLAN

The undersigned hereby confirms that each court facility to be used for court operations is in compliance with each of Chief Justice Cheri Beasley's orders and emergency directives in response to the COVID-19 outbreak.

The undersigned has consulted with Chatham County Clerk of Court Dana Hackney, Orange County Clerk of Court Mark Kleinschmidt, Chief District Court Judge Samantha Cabe, District Attorney Jim Woodall, Public Defender Susan Seahorn, Orange County Sheriff Charles Blackwood, Chatham County Sheriff Mike Robinson, and the Public Health directors of each county.

The undersigned believes it is most appropriate, efficient, and safe to attempt to implement a jury trial resumption plan that contemplates, in both counties, the use of the existing courthouse campuses. However, the possibility remains that the resumption of jury trials, along with the continued use of the courthouses for district court and other regularly scheduled matters, may prove to simply be too difficult to manage. The undersigned, with the able assistance of the Clerks of Courts of both counties, will remain in contact with county officials to continue to monitor the need to implement different plans involving other county facilities, or, in the discretion of the counties, the rental or use of schools, universities, hotel facilities, or any other appropriate facility.

Therefore, the undersign hereby adopts the following jury trial resumption plan:

- 1. As it relates to summoning and excusing jurors, allowing for as much of the process to be handled remotely as possible:**
 - a. The juror summons will include a letter from the Senior Resident Superior Court Judge that outlines the precautions and measures court and county officials are taking in response to the COVID-19 crisis.

- b. The juror summons (or letter from the Senior Resident) will also make clear that a juror with COVID, suspected COVID, symptoms of COVID, or who has been in close contact with someone diagnosed with COVID in the past 14 days should NOT appear in person, but instead provide a mechanism for reporting that information to the court.
- c. Clerks of Court continue to be empowered to utilize discretion in excusing or deferring potential jurors as they may call in to the Clerk's office.
- d. The juror summons will include a time and date certain that a potential juror may appear via WebEx (using URL for the Battle Superior Courtroom in Orange and the Carl R. Fox Superior Courtroom in Chatham) to address any concerns about service (including positive or suspected cases of COVID) and handle excuses and deferrals as appropriate. This will be conducted on the Thursday morning (10:00am) prior to the date jurors are to appear. This time and date may be modified as necessary. It will be presided over by a Resident judge of the district OR the presiding trial judge. Attorneys will be invited to observe these proceedings, which will be recorded on WebEx. Jurors will be informed that if they do not have a way to access the WebEx proceeding from home (or otherwise), that they may use the public terminals available in the courthouse.
- e. An assessment will be made as to the size of the remaining jury pool and the likelihood of being able to seat a jury with those remaining. If, in the discretion of a Resident or presiding judge, the pool does not appear to be sufficient, the entire venire may be excused and trials may be continued without waiting until jurors are actually present.

2. As it relates to conducting voir dire with social distancing:

- a. Civil and criminal trials shall be conducted in the Battle Courtroom in Orange County and in the Carl R. Fox Courtroom in Chatham County.
- b. Based on the size of the courtrooms in question, entry will be limited to parties, lawyers, and necessary courthouse staff. In the discretion of the presiding judge or a Resident Superior Court Judge, others may be permitted into the courtroom if proper social distancing may be maintained. Members of the public or media unable to be physically accommodated in the courtroom shall be accommodated through the use of WebEx or other feed.

- c. The courtrooms and jury assembly rooms shall continue to be marked with tape (or other appropriate marking) to demonstrate appropriate social distancing.
- d. The jury pool shall report to the courthouse in a way that utilizes appropriate physical distancing measures. This means:
 - i. Jurors will be summoned in two “batches” per day, one in time to be ready for the Court at 9:30, and one to be ready at 2.
 - ii. The Clerk will summons a number of citizens that he or she would anticipate yielding approximately 25 jurors in each “batch.”
 - iii. In each County:
 - 1. If approximately 25 jurors are present, the jurors will be oriented in the Historic Courthouse. After orientation, the clerk will randomly select half to go to the trial courtroom (the Battle Courtroom in Orange; the Fox Courtroom in Chatham). The other half will report to the jury assembly room in Orange and, in the discretion of the Clerk, the jury assembly room or Courtroom 3B in Chatham).
 - 2. If more than about 25 jurors are present, the Clerk will first determine whether there is adequate space to accommodate the additional jurors. After doing so, the Clerk will consult with a Resident Superior Court Judge or the presiding Judge to determine whether to retain the jurors in excess of about 25, or whether to release them. Once that decision is made, the clerk will randomly select approximately 12 jurors to go to the trial courtroom and approximately 12 jurors to go to the jury assembly room (or Courtroom 3B in Chatham). These jurors may also remain in the Historic Courtroom until closer to the time they are expected to be called into the trial courtroom. The remainder will either go to the additional space identified by the clerk or be released, as warranted and in the discretion of the presiding judge.
 - 3. If substantially fewer than 25 jurors are present, the clerk and a Resident Superior Court Judge or the presiding judge may, if appropriate distancing may be maintained, elect to keep the jury pool together and have them all report to the trial courtroom.

- iv. The jurors in the courtroom will go through the jury selection process. This process should end in the discretion of the presiding judge in time for a lunch or end of day recess and cleaning of the courtroom.
- v. Treatment of jurors summonsed for that session:
 - 1. Any juror **excused** shall be released from service and asked to leave the courthouse.
 - 2. Any juror who is **accepted** by both sides shall be released for the remainder of the day with instructions on next steps. The clerk should obtain the juror's contact information and provide a direct contact to the Clerk's office.
 - 3. Any juror **not yet called** "into the box" shall be excused. Jury selection will resume with the next "batch." The presiding judge has discretion as to the point at which to end the morning or afternoon session. Any attorney or party who reasonably anticipates being unable to examine a "batch" of jurors in the time frame allotted shall alert the presiding judge prior to jury selection and shall propose an alternate plan, to include the possibility of seating jurors individually, or up to 6 jurors at a time, as opposed to passing on the full panel.
- e. The jurors will be seated in the gallery instead of the jury box. Spacing guidelines will be maintained through the continued use of tape to mark seating locations.
- f. Jurors shall properly wear face coverings at all times, ensuring proper coverage of the nose and mouth.
- g. One juror seat at the front of the courtroom will remain open during the initial seating of the jury pool. This seat may be used, in the discretion of the presiding judge, by any juror with difficulty in seeing or hearing from their original seat. If the change in location does not remedy the situation, the presiding judge may excuse the juror.
- h. During jury selection, the attorney tables will remain in their customary orientation, but the attorneys and parties may sit on the opposite side, facing the jury, just as the judge does.

3. As it relates to conducting trials with social distancing in the courtroom for all court participants, including the jury, and in the deliberation room:

- a. Attorneys shall be familiar with this Administrative Order. Attorneys are strongly encouraged to seek a pre-trial conference via WebEx to address social distancing issues addressed in this Order in addition to the pre-trial issues contemplated by Rule 7 of the General Rules of Practice for the Superior and District Courts.
- b. The general courthouse rules regarding face coverings shall apply to all parties, attorneys and court personnel present in the courtroom.
- c. While this COVID jury trial resumption plan is in effect, the Senior Resident Superior Court Judge shall determine which cases shall be tried, after hearing from the attorneys. Relevant factors include estimated length of trial, age of case, needs of attorneys, parties, and witnesses, and in the case of criminal matters, whether the defendant is in pre-trial custody.
- d. For the trial, the party's tables will be rotated such that the attorneys and parties are facing each other. They may be backed up or angled in an effort to prevent the witness stand from being behind one table and in an effort to make both the jury and the witness as visible as possible. Attorneys will be permitted to move around their respective table as needed to better observe the witness, the Court, opposing counsel, and the jury. The jury shall be seated, in pre-marked socially distant spots, in the gallery seating of the courtroom.
- e. Each juror will have a numbered bag placed at his or her seat, which will have in it a juror badge or sticker, a notepad, and a pen. As usual, these will be collected and kept secured and confidential overnight.
- f. Efforts shall be made to have the jury use the main courtroom entrance to enter and leave, and side or alternate doors used for parties, attorneys, and litigants.
- g. Bench conferences that cannot be addressed at the bench may be accommodated by having the jury remain in the courtroom, with the presiding judge and attorneys/self-represented litigants using the jury deliberation room.
- h. Efforts shall be made to have a private room or area for each side to use for conferences while in recess.
- i. Attorneys and their clients may use devices to text, email, or otherwise communicate with each other during the trial. Any other method of

communication (other than whispering or passing notes) shall be brought to the attention of the presiding judge prior to trial.

- j. Documents, photographs, and other “paper” exhibits shall be pre-marked. This does not apply to tangible items incapable of reproduction, such as weapons, clothing, or other physical objects. The originals shall be provided to the clerk prior to trial, or at the very least, prior to direct examination of a witness (this rule does not apply to cross-examination). The parties are strongly encouraged to exchange pre-marked exhibits prior to trial. If there are strategic or other reasons why a limited number of exhibits are not exchanged prior to trial, the remainder should still be exchanged. Even in those instances, the unexchanged (between the parties) exhibits shall still be provided to the Clerk, who is directed not to disclose the existence of those exhibits unless and until they are identified in court.
- k. Exhibits shall be published via the audio/visual system in the courtroom. Absent leave of the court, no exhibits in paper form shall be published to the jury. Attorneys may schedule time in the courtroom, **prior to** the week of trial, in order to ensure familiarity with the audio-visual system.
- l. Attorneys should avoid approaching the witness. Anticipated exhibits may be placed on the witness stand prior to the witness taking the stand, or may be shown to the witness on the monitor.
- m. Attorneys should avoid approaching each other. Attorneys should work together to share exhibits, anticipate issues, and discuss the manner in which issues will be addressed prior to trial. In addition, attorneys should alert the Court at breaks of anticipated issues that may arise prior to the next break.
- n. Attorneys will continue to stand to address the jury in openings and closings, but are required to maintain proper social distance. A podium or tape shall be placed to indicate appropriate distancing. The undersigned will make an effort to procure an additional microphone for use in openings and closings.

4. As it relates to daily screening of jurors, court personnel, attorneys, witnesses, and parties for COVID-19 exposure or infection:

- a. Every person, regardless of their role inside the building, will need to assess how they are feeling each day, and report as soon as possible to their superior in the event that they have COVID, symptoms of COVID, close contact with

someone diagnosed with COVID in the past 14 days, or otherwise do not feel well enough to report to work that day.

- b. Upon arriving at the courthouse each day, each **AOC employee** and **all lawyers** will be subject to the courthouse COVID-19 screening procedures. This may be completed by going through the “public” entrance, or by a self-assessment addressing the same questions and requirements of members of the public entering through the main entrance.
- c. Upon arriving at the courthouse each day, each **juror**, all **witnesses**, and all **parties** will be subject to all courthouse screening procedures.

5. As it relates to making face coverings available to jurors, court personnel, attorneys, witnesses, and parties:

- a. All persons involved in a trial are encouraged to bring their own face covering and any other protective gear they wish to use. Attorneys are encouraged to remind clients, witnesses, and anyone else attending the trial to report to the courthouse with appropriate face coverings.
- b. Any person who is unable to provide their own face covering will be provided with one, and it must be worn to cover the mouth and nose at all times.
- c. Anyone who loses or breaks their face covering, or otherwise is subject to a malfunction of the covering, shall immediately report to a bailiff or clerk for assistance in obtaining a replacement. Generally speaking, a supply of face coverings should be present in the courtroom and in any other location in which jurors are present.

6. As it relates to a response to a juror, defendant, attorney, witness, judge, or other courtroom personnel becomes symptomatic, tests positive for COVID-19, or has a known exposure to someone who has tested positive for COVID-19 during the trial:

- a. The presiding judge shall consult with the Senior Resident Superior Court Judge, who is also the COVID Coordinator, to address these situations.
- b. Consideration shall be given to replacing a juror who is symptomatic, has had a positive test, or been in close contact with a person who has tested positive with an alternate. Consideration shall also be given to when a bailiff, clerk, or even lawyer (depending on the situation) may be replaced.

- c. The highest priority shall be on the health and safety of all involved. The Court may consider an extended recess or the declaration of a mistrial, as appropriate.

This plan is hereby adopted, this the 1st day of October, 2020.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Allen Baddour

Senior Resident Superior Court Judge